

FILED
AUG 22 2008

CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 08-30035

Plaintiff,

OPINION AND ORDER

-VS-

RONALD TAKES THE KNIFE,

Defendant.

* * * * *

Defendant. *
*

Defendant filed a motion to dismiss multiplicitous counts, Doc. 26. Magistrate Judge Mark A. Moreno issued a report and recommendation on August 7, 2008, Doc. 31, recommending that the motion to dismiss be denied.

Copies of such Report and Recommendation were served upon the parties as required by 28 U.S.C. § 636. Defendant filed his objections to the report and recommendation, Doc. 32. The Court has conducted a *de novo* review of the record and has determined that the report and recommendation should be adopted and the motion to dismiss should be denied. I agree with the Magistrate’s determination that defendant’s claims that the charges against him are multiplicitous or constitute double jeopardy are foreclosed by the Eighth Circuit’s decision in United States v. Two Elk, ___ F.3d ___, 2008 WL 2967059 (8th Cir. August 5, 2008).

Now, therefore,

IT IS ORDERED:

1. The report and recommendation, Doc. 31, is adopted.
2. The defendant's objections, Doc. 32, are denied.
3. The motion to dismiss, Doc. 26, is denied.

Dated this 22nd day of August, 2008.

BY THE COURT:

Charles B. Klemm

CHARLES B. KORNMAN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Barbara J. Daigle DEPUTY
(SEAL)